IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

Raj Kumar vs. District Rural Development Agency Banswara

S.B. CIVIL WRIT PETITION NO.4089/1993 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

AND

Vipin Kumar Joshi vs. District Rural Development Agency Banswara

S.B. CIVIL WRIT PETITION NO.4084/1993 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 28th July, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate,for the petitioners.
Mr.Rameshwar Dave, Dy.GA, for the respondent.

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BY THE COURT: -

In these two writ petitions, which are being decided by this common judgment, the petitioners

have prayed for writ of mandamus against the respondents to regularize their services with effect from their initial appointment i.e. 22nd Dec., 1987 in the case of the petitioner Raj Kumar and 20.10.1986 in the case of the petitioner Vipin Kumar Joshi. Initially the appointments of the petitioners were made on these dates for a period of two months on the post of Lower Divisional Clerk with the District Rural Development Agency, Banswara (in short DRDA) on daily wages basis, but they were eventually continued for more than three years. The petitioners have placed on record a copy of the representation dated 11.1.1989 which they jointly made to the respondents alongwith two other persons praying for regularization of their service and payment of salary in the regular pay scale. The Addl. Collector, DRDA, Banswara vide his letter dated 17th June, 1987 recommended their case for regularization giving details of their continued working. In this letter of recommendation name of one Miss Sharda Sharma was also included who was shown at S.No.3 with the date of her initial appointment being mentioned as 2.11.1987. Date of initial appointment of the

petitioners no. 1 and 2 was mentioned as 22.12.1987 and 20.10.86 respectively. In this letter of recommendation, the Addl. Collector, DRDA stated that these persons were subjected to written test and interview but since there was an inerim order passed by the court in civil suit filed at the instance of Vipin Kumar Joshi, Suresh Jain and Chandra Prakash Gupta, the final order could not be passed. He recommended that in view of the experience and their continuous employment with the respondents, it would be in the interest of the authority that their services are be regularized and the litigation in the court may be put to an end. It appears that the Addl. Collector, DRDA made this recommendation on the basis of the application of the petitioners and others submitted to him on 24.4.1990 with which they represented that they should be given regular appointment and if they are given regular appointment, the civil suit pending in the court would also be decided. The petitioners gave an undertaking that once when they are granted regular appointment, they would not raise any further dispute nor would they file any fresh civil suit and immediately after their regular

appointment, they would withdraw the pending civil suit. It appears that acing on such undertaking given by the petitioners and others, the case of the petitioners and others was recommended by the Addl. Collector, DRDA and the respondents virtually decided to regularize their services. The Addl. Collector (Development), DRDA therefore passed an order dated 28.4.1990 regularizing services of the petitioners under Regulation 3A of the District Rural Development Agency Staff Service Regulations, 1983 (in short Regulations of 1983) in the pay scale of Rs.950-1680 at the minimum of the pay of Rs.950 and admissible allowances.

However, the order passed by the respondents on 29.1.1990 gave a cause of grievance to the petitioner. In this order it was stated that one Miss Sharda Sharma who was appointed on the post of LDC on daily wages basis w.e.f. 2nd Nov., 1987 and was removed on 28.8.1989 filed a writ petition being S.B. Civil Writ Petition No.2367/1989 against the said order, which was decided by this court on 3rd July, 1992 whereby the removal order dated 22.8.1989 was set aside with the direction

to the respondents to make payment of her salary in the regular pay scale of Rs.880-1660 at the minimum of pay of Rs.880 w.e.f. 2.11.1987. The case of the petitioners is that passing of the order dated 3rd July, 1992 gave rise a new cause of action because the date of initial appointment of one of the petitioners namely Vipin Kumar Joshi is 20.10.1986, which is more than a year before the date of initial appointment of Miss Sharda Sharma whereas another petitioner Raj Kumar was initially appointed on 22.12.1987, i.e., within two months of the initial appointment of Miss Sharda Sharma. It has been argud that Addl. Collector, (Development), DRDA vide letter dated 17.6.1989 has also recommended the case of Miss Sharda Sharma alongwith the case of the petitioners and others for regular appointment and, therefore, she cannot be regularized in service earlier than the date of regularization of the petitioners. The petitioners have filed a copy of the judgment of this Court in the case of Kumari Sharda Sharma VS. State of Rajasthan & Anr. (S.B. Civil Writ Petition No.2367/1989, decided on 3rd July, 1992). A bare perusal of the said judgment reveals that she filed writ petition

with the prayer that the respondents be directed not to terminate her services till regularly selected candidates are available and to fix her salary in the regular pay scale of Rs.880-1680 and pay difference of amount with interest @ 12% per annum.

It appears from the judgment that Kumari Sharda Sharma was appointed on the post of telephone operator w.e.f. 2.11.1987 and continued on the said post with the respondents till 22.3.1989. This Court held that since DRDA is an industry in the meaning of Section 2(J) of the Industrial Disputes Act, therefore, Kumari Sharda Sharma having completed 240 days, her services could not have been terminated without compliance of Section 25F of the Industrial Disputes Act. Moreover, the Court found that initial appointment of Kumari Sharda Sharma contained a stipulation to the effect that as and when regularly selected candidates would be available, her services would stand dispensed with automatically, but no such regularly selected candidates had become available and yet termination order was passed. Accordingly, the writ petition was allowed and the

termination order dated 22.8.1989 was set aside and the respondents were directed to reinstate the petitioner (Kumari Sharda Sharma) with full back wages with the further directions to pay arrears of back wages within three months and grant minimum of the pay scale prescribed for the post of telephone operator w.e.f. the date of report on duty.

The case of the petitioners is that the respondents have deliberately misread the judgment passed by this Court and specially its operative portion with a view to give undue advantage to Miss Sharda Sharma. While the petitioners have been treated to have been regularized in service vide order dated 28th April, 1990, the salary of Miss Sharda has been fixed in the pay scale of Rs.880-1680 at Rs.880/- w.e.f. 2.11.1987, which pay scale was later revised to 950-1680. She has thus become entitled to receive regular pay scale virtually four years before the petitioners, even though her initial appointment was 2.11.1987, which is later than the appointment order of the petitioner Vipin Kumar Joshi and from close to the date of initial appointment of petitioner Raj

Kumar. In doing so, the respondents have deliberately misread the judgment passed by this Court and by misquoting the operative part of the judgment, granted her undue advantage stating in the order dated 29.1.1993 that she was being paid in the regular scale of Rs.880-1680 w.e.f. 2.11.1987 because there was an order to this effect by this Court. According to the petitioners in fact no such order was ever passed by this Court. It has been therefore argued that that inspite of giving an undertaking not to raise any dispute at a later stage, the petitioners were constrained to file this writ petition immediately in the year 1993 itself when the impugned order dated 29.1.1993 was passed.

On the other hand Shri Rameshwar Dave, learend Dy. Government Advocate appearing for the respondents argued that the petitioners were engaged in different spells and not continuously. Their representation was forwarded to the Government because they had given an undertaking that if their services were regularized, they will withdraw the civil suit pending before the civil court. In the civil suit they prayed for grant of

regular pay scale and had challenged the notification whereby regular process of selection was started. The learned civil court passed an interim order restraining respondents from terminating the services of the petitioners/plaintiffs. According to him, the dispute has now been settled because the petitioners have already withdrawn the civil suit upon being regularized and, therefore, the petitioners are now estopped from raising the same dispute again. In support of this arguments, the learned Dy. Government Advocate heavily relied on the undertaking given by the petitioners which is enclosed with the reply as Annex.R/1. He has argued that no one can claim regular scale of pay by regularizing him in service form the date of his initial appointment if such initial appointment has not been made as per the prescribed Rules. As per Regulation 3(a) read with Schedule-A appended to the Regulations of 1983, a person who is secondary pass and is having typing speed of 20 w.p.m. is eligible for being appointed on the post of LDC. The petitioner was initially engaged without such test, as his engagement was on casual daily wages basis. In

order to regularize him in service, it was imperative to conduct typing test and hence, the respondents held a typing test on the request made by the petitioners. It has been argued that the respondents have challenged the judgment passed by this Court in the case of Miss Sharda Sharma and the special appeal is pending, but he could not give any definite information whether such special appeal filed against the said judgment is still pending or has already been decided.

It has been argued that the petitioners cannot claim parity with Miss Sharda Sharma because she was granted regular pay scale w.e.f. the date of her reporting on duty in compliance of the order passed by this Court whereas there was no such direction by any court with regard to the petitioners. The petitioners having given undertaking not to raise any dispute and not to file any litigation at later stage, cannot now be permitted to file the present writ petition because on the basis of their undertaking, the respondents have already regularized their services taking a liberal view.

I have heard learned counsel for the parties and perused the record.

A careful study of the judgment passed by this Court in the case of Miss Sharda Sharma (supra) reveals that this Court in its operative part merely quashed the termination order dated 22.8.1989 and directed the respondents to reinstate the petitioner with full back wages and to pay arrears of back wages and further directed to grant minimum of the pay scale prescribed for the post of Telephone operator w.e.f. the date of petitioner report on duty. There are in all three parts of direction, one with regard to reinstatement, second with regard to payment of full back wages within a period of three months from the date of judgment, which was obviously covered the period from the date of termination dated 22.8.1989 till the date of her reinstatement and third and last with regard to grant of minimum of the pay scale prescribed for the post of telephone operator w.e.f the date the petitioner report on duty. It is indeed surprising that when this Court did not give any direction to pay to Miss. Sharda Sharma in the minimum pay scale of

Rs.880-1680 w.e.f. 2.11.1987, how could the respondents in the order dated 29.1.1993 pass such direction describing the same to have been made in compliance of the order of this court. It is a case of total misreading the the operative part of the judgment of this Court. A co-workman of the petitioners having been in this manner granted advantage, she has certainly been able to steal a march over them. The learned Dy. Government Advocate during arguments could not defend the order dated 29.1.1993 except by stating that he shall appropriately advise the the authorities to examine the matter and withdraw the undue advantage granted to Miss Sharda Sharma. I am afraid that after lapse of such a long period now whether the benefits granted to Miss. Sharda Sharma can be withdrawn. It may be a debatable issue as to if the payment of arrears on the basis of order dated 29.1.1993 having been made, can it be recovered now at this late stage. Since Miss Sharda Sharma is not a party to the present writ petition, therefore, I cannot also pass any such order which may effect her in any manner. In the peculiar facts and circumstances of the case, when the respondents by their own action in passing the

order dated 29.1.1993 ostensibly based on misreading of the earlier judgment of this Court, the present writ petition cannot be outrightly rejected on the basis of doctrine of estoppel. At the same time, however, this Court cannot issue a writ of mandamus in favour of the petitioners merely because some order in the case of Miss Sharda Sharma a fellow employee of petitioners', has wrongly been passed in her favour by the respondents.

It is trite law that a writ of mandamus cannot be issued which has the effect of perpetuiting any illegality. So also, the writ of mandamus cannot be issued on the basis of argument of discrimination which in turn is based on some wrong order passed in favour of certain persons. I may in this connection usefully refer to following observations of the Hon'ble Supreme Court in Chandigarh Administration & Anr. VS. Jagjit Singh & Anr. reported in AIR 1995 SC 705: -

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour

of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pas another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected,if it can be done according to law- indeed,wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other persons is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why

> examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other persons is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments o the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial powers, we express no opinion. That can be dealt with when a proper case arises).”

This court therefore cannot issue writ of mandamus requiring the respondents to treat appointment of the petitioners having been made on regular basis from the date of their initial

appointment itself. This is so because the order of their regularization was passed only after they were subjected to process of recruitment under Regulation 3A of the Regulations of 1983.

Without going into the question of granting undue advantage to Miss Sharda Sharma by misreading and misquoting judgment passed by this Court, this is to be noted it is always expected of the Government to take its own independent decision within their administrative sphere, whether or not to examine the correctness of the order dated 29.1.1993 passed by them in respect of Miss. Sharda Sharma so as to at least make the amends prospectively.

With these observations, these writ petitions are dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-